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United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No.: 15CR1928-LAB

Plaintiff.

UNITED STATES' PRELIMINARY TRIAL MEMORANDUM

V.

JOSEPH BRIEN BUDDENBERG (1),
NICOLE JUSANITA KISSANE (2).

Date: TBD
Time: 9:00 a.m.

Defendants.

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Laura E. Duffy, United States Attorney, and John N. Parmley and Michael F. Kaplan, Assistant United States Attorneys, and files the following preliminary trial memorandum.

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I.

STATEMENT OF THE CASE

A. Information

On July 22, 2015, the grand jury returned a one-count indictment charging Joseph Buddenberg and Nicole Kissane with conspiracy to violate Title 18, U.S.C., §§ 43(a)(1), (2)(C), and (b)(3)(A), otherwise known as the Animal Enterprise Terrorism Act. The indictment charges that defendants went on several cross-country animal-related vandalism sprees, wreaking havoc on mink farms, private property, and other businesses.

B. Trial Status

The trial date has not yet been set.

C. Status of Counsel

Devin Burstein represents Buddenberg and John Ellis represents Kissane.

D. Custody Status

Both defendants are out of custody on signature bonds and live in the Bay Area.

E. Interpreter

The United States does not require an interpreter for any of its witnesses.

F. Jury Waiver

Defendants have not waived jury trial.

G. Pre-Trial Motions and Motions in Limine

Defendant Buddenberg filed a motion for discovery and defendant Kissane joined in that motion. [Docs. 21 and 22.] As of the date of this Trial Memo, discovery remains ongoing. The Government has not received any reciprocal discovery.

The Government filed a motion for handwriting exemplars for both Buddenberg and Kissane. [Doc. 35.] Defendant Buddenberg filed an opposition to the Government's motion. [Doc. 37.] The court granted the Government's request with regard to defendant Kissane, but it was denied with regard to defendant Buddenberg.

1 Defendant Kissane filed a motion to declare the case complex, in which
 2 defendant Buddenberg joined, which was ultimately denied by Judge Burns. [Doc.
 3 42.]

4 Defendant Buddenberg, joined by defendant Kissane, filed a motion to transfer
 5 the proceedings to the Northern District of California and the Government filed a
 6 motion in opposition to that request. [Docs. 51 and 54.] That motion is still under
 7 consideration by the Court.

8 At the December 21, 2015 motion hearing, the Court directed the United States
 9 to file this preliminary trial memorandum in an attempt to alleviate Defendants'
 10 concerns over the scope of the discovery.

11 The next hearing date is a March 1, 2016 motions hearing.

12 **H. Stipulations**

13 Stipulations of fact, if any, will be provided to the Court prior to the
 14 commencement of trial.

15 **I. Discovery**

16 As set forth above, the United States continues to comply with its discovery
 17 obligations. The United States has produced approximately 18,000 pages of discovery
 18 as well as approximately 40 videos. The United States will continue to work
 19 informally with defense counsel to resolve any discovery disputes.

20 **II.**

21 **STATEMENT OF FACTS**

22 Defendants Nicole Kissane and Joseph Buddenberg, two hardcore animal rights
 23 extremists, spent the summer of 2013 doing everything they could to disrupt and
 24 destroy the mink industry in a series of epic, cross-country road trips. They traveled
 25 from mink farm to mink farm, attempting to release mink into the wild, stopping
 26 along the way to slash tires, glue locks, and vandalize private homes with acid and
 27 window etchant. All told, the FBI estimates that these two caused in excess of
 28 \$400,000 dollars in damage that summer.

1 **A. Background on Extreme Animal Rights Groups**

2 There are a number of militant environmental groups in the United States,
3 including the Animal Liberation Front and the Earth Liberation Front. These groups
4 promote illegal activity in order to further their stated agenda. For example, the
5 Animal Liberation Front and other like-minded groups are opposed to the fur industry
6 and other types of commercial agricultural activity involving the death or suffering of
7 animals. Because legislation and popular opinion have not been successful to change
8 current practices, these groups advocate “direct actions” to achieve their goals.
9 Typically, a “direct action” is an illegal activity designed to specifically harm a
10 particular group. Direct actions can range from simple vandalism to arson.

11 Furthermore, these groups aren’t groups in the traditional sense. There is no
12 leader, although there are influential individuals in the movement. Like-minded
13 people are encouraged to act for themselves and do what they can to effect change.
14 After committing a direct action, the perpetrators will publicize their crimes through
15 animal rights-affiliated websites in order to encourage and recruit others and provide
16 publicity to their cause. Typically, this is done through “communiques” which are
17 posted on these animal rights-affiliated websites. Typically, these websites are hosted
18 overseas, are encrypted, don’t log information, or are otherwise inaccessible to law
19 enforcement. In other words, once someone frees 1,000 mink from a mink farm, for
20 example, they might send a communique using encrypted email to a website which
21 will then post it for the world to see in a way which is not traceable back to the
22 perpetrator. This encourages others to follow in their footsteps.

23 **B. The San Diego-based Activity**

24 Sometime in the late hours of July 14, 2013 or the early morning hours of July
25 15, 2013, Kissane and Buddenberg (and one other, as of yet unidentified individual)
26 vandalized the Furs by Graf commercial fur store in San Diego; the La Mesa home of
27 Kimberley Graf, the owner of Furs by Graf; and the Spring Valley home of Ludi and
28 Janet Graf, the former owners of Furs by Graf and the parents of Kimberly.

1 The Furs by Graf store and residences of its owner and former owner were
2 vandalized with paint and caustic chemicals. Additionally, the locks were glued. At
3 the Fur Store, the vandals poured butyric acid everywhere. This foul-smelling
4 chemical leaves an odor which can last for weeks. The windows at all locations were
5 etched with glass etchant, requiring replacement. Additionally, the vandals used paint
6 stripper on vehicles, and muriatic acid to stain the concrete. The total damages were
7 approximately \$30,000. An unknown individual posted a “communiqué” on
8 www.directaction.info, an animal rights website, claiming responsibility for the acts.
9 Evidence was collected and sent to the FBI laboratory for analysis. Results of field
10 testing yielded the presence of paint stripper, muriatic acid, glass etchant, and butyric
11 acid. Graffiti left at the scenes indicated that the motivation for the vandalism was
12 based on the Graf’s association with the fur industry. For example, phrases like
13 “murderer,” “killer,” or “animal murderer” were spray painted onto their homes,
14 business and vehicles.

15 On July 15, 2013, at approximately 1:25 a.m., home surveillance cameras near
16 one of the residences captured a vehicle consistent with a Honda Fit driving past the
17 house. Approximately eight minutes later, the video shows three individuals walking
18 from the direction of the vehicle towards the direction of the victim’s residence.
19 Approximately 10 minutes later, the surveillance footage captured three individuals
20 running away from the victim residence.

21 At approximately 3:14 a.m., a license plate reader (LPR) captured California
22 license plate 6YHL565 near 4483 Park Drive in Carlsbad, California, approximately
23 45 minutes from the victims’ residences. According to the California Department of
24 Motor Vehicles (DMV), the 2012 Honda Fit is registered to Nicole Kissane and Cathy
25 Kissane, the mother of Nicole. As explained below, numerous witnesses and other
26 evidence will show that Nicole Kissane and Joseph Buddenberg were the exclusive
27 users of that 2012 Honda Fit during the timeframe associated with the indictment.

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1 On December 18, 2013, agents searched Kissane's Fit and her mother's home
 2 in Escondido (where Kissane was living) pursuant to search warrants. Agents seized a
 3 TomTom portable GPS device. The GPS device yielded two types of relevant
 4 information. First, it contained "entered locations," that is, addresses entered manually
 5 into the GPS. Second, it contained "GPS fixes" which showed where the GPS had
 6 actually traveled to. The data downloaded from the GPS corresponded to the location
 7 of the two homes that were vandalized in San Diego. More specifically, the GPS
 8 showed that someone had entered fictitious locations into the GPS very near to the
 9 locations where the vandalism occurred. Furthermore, the GPS fixes showed that the
 10 GPS device was, at some point, incredibly near to the same locations.

11 In November 2013, agents executed a covert search of Kissane's Honda Fit in
 12 Oakland, California. As explained in greater detail below, during execution of the
 13 warrant, the Agents observed and photographed in place two one gallon jugs of
 14 muriatic acid. One of the jugs was approximately half full. In the December 2013
 15 search of Kissane's residence, FBI Agents seized a handwritten list of animal
 16 enterprises in what the FBI Laboratory indicated may be Buddenberg's writing. At
 17 the top of the list was the following: "muriatic acid or hydrochloric acid pool pH
 18 level."

19 **C. First Out of State Road Trip**

20 One week after the July 15 vandalism at Furs by Graf, Buddenberg and Kissane
 21 were photographed making a \$300 cash withdrawal in Escondido, California. The
 22 distance from Escondido, California to Plains, Montana is approximately 1,300 miles
 23 and would take approximately 18 hours to drive.

24 On July 27, 2013, there was an early morning release of a lone bobcat at Frazier
 25 Fur Farm in Plains, MT. There was no property damage and the financial damage of
 26 \$1,000-\$1,500 is isolated to the released bobcat. A communiqué was posted on
 27 BiteBack, an animal rights-affiliated website, referencing Rod Coronado's visit to a
 28 much larger bobcat farm more than 20 years ago. Rodney Coronado is a highly

1 influential leader in the world of extreme animal rights. He is known to have sunk
2 whaling ships in Iceland and is a convicted arsonist due to his use of incendiary
3 devices to free mink and destroy mink research. The story of Coronado's bobcat
4 release is chronicled in Coronado's book, Operation Bite Back. Coronado's essay
5 collection "Strong Hearts" was photographed in Kissane's vehicle in November of
6 2013. The book and collection were seized from Kissane's house in December of
7 2013. In addition, Kissane and Buddenberg attended a 2014 event in which Coronado
8 spoke in Oakland, California. In the December 2013 search of Kissane's house and
9 vehicle, a number of handwritten lists of animal enterprises were seized. Two of the
10 pages in Kissane's handwriting contained the Frazier Fur Farm address and the fact
11 that it housed bobcats.

12 On July 28, 2013, there was an early morning vandalism of the personal and
13 work vehicles of Larry Rose, the Police Chief of Darby, Montana. One tire was
14 slashed on his personal vehicle and one was slashed on his marked patrol vehicle. The
15 cost of the tire repairs was \$347. Surveillance video from his residence captured an
16 individual entering his property (to slash the tires) with another waiting near the edge
17 of the property. Two separate cameras captured a Honda Fit one block from Rose's
18 residence prior to and after the vandalism. A LPR captured Kissane's license plate
19 approximately 3-4 blocks from Rose's residence, just after the vehicle was captured
20 coming from the direction of his residence.

21 Rose's residence is approximately one mile from the Behling Fox Farm that
22 closed prior to July 2013. The address and telephone number for the Behling Fox
23 Farm were in two of Kissane's handwritten notes seized in the December 2013 search.
24 Larry Rose previously owned a successful taxidermy business that was well-known
25 outside the state of Montana. He has also been a key voice in opposition to the
26 reintroduction of wolves in Yellowstone National Park.

27 On July 29, 2013, in the early morning hours, there was a release of 3,000 mink
28 from the Moyle Mink Ranch in Burley, Idaho. Exterior barbed wire fencing was cut

1 and the breeding records were torn down. The estimated damages are approximately
2 \$108,100. A communiqué was posted on www.directaction.info that referenced
3 Cindy Moyle's position as a board member and former treasurer of Fur Commission
4 USA. The address, telephone number, and the fact that Moyle was a board member of
5 the Fur Commission were in Kissane's handwritten notes seized in December 2013.
6 Also seized during the search was a map of Idaho, with a Post-it Note placed next to
7 Burley, Idaho.

8 At the end of July or beginning of August 2013, Kissane dropped Buddenberg
9 off in Oakland and returned to Escondido, as evidenced by financial transactions and
10 IP logins to their emails and/or Paypal accounts. By August 7, 2013, Kissane returned
11 to the Bay Area as evidenced by photographs of her withdrawing cash from an ATM
12 in Berkeley, California.

13 **D. Second Road Trip**

14 On August 12 and 15, 2013, Kissane made \$300 ATM withdrawals in the Bay
15 Area.

16 On August 17, 2013, Kissane was arrested for shoplifting two pair of winter
17 gloves in Elko, Nevada. Buddenberg left the store shortly before she attempted to do
18 so, and was seen driving away after she was stopped. Buddenberg posted her bail later
19 that day, presenting his California driver's license as proof of his identity.

20 Early in the morning of August 21, 2013, Ribnick Fur and Leather, a furrier in
21 Minneapolis, Minnesota had its windows smashed and locks glued. A communiqué
22 was posted on www.portlandindymedia.org and reposted on www.directaction.info.
23 Surveillance video captured an individual, matching Buddenberg's description,
24 carrying out these acts. Damage was estimated at approximately \$1,800.

25 On August 27, 2013, vandals broke a window on the home of Brian MacMillan
26 in Sun Prairie, Wisconsin while he was on vacation. They ran a garden hose through
27 the window and turned it on in an attempt to flood the house. A communiqué was
28 posted on www.directaction.info claiming responsibility. The statement referenced

1 MacMillan's position as Vice President of Wild Fur Operations at the North American
2 Fur Auctions. In December 2013, FBI Agents seized two items believed to be in
3 Kissane's handwriting referencing "Brian L. MacMillan" with his Sun Prairie home
4 address and telephone number as well as the notation "wild fur" on one of the items.

5 On August 27, 2013, around 2:48 p.m., Kissane and Buddenberg were captured
6 on video at a Starbucks in Peru, Illinois. On August 28 at approximately 2:00 a.m.,
7 Kissane was stopped for speeding in LaSalle, Illinois. Buddenberg was a passenger in
8 the vehicle. Kissane would not provide answers as to where she was coming from, nor
9 where she was going. After repeated questions on the topic, Kissane admitted they had
10 recently visited a beach at Lake Geneva, which is located in southern Wisconsin.
11 Additionally, she admitted that they had traveled earlier through Minnesota and that
12 prior to Minnesota, they had traveled through South Dakota, Utah, and Nevada.
13 Kissane stated she was currently en route to Des Moines, Iowa, then Nebraska,
14 Colorado, Utah, and finally Nevada. The trooper indicated Kissane appeared very
15 nervous. Buddenberg was questioned separately, and was even less forthcoming with
16 his answers as to where they had been and to where they were traveling.

17 Early in the morning of August 30, 2013, approximately 400-500 mink were
18 released from the Donald B. Conrad Fur Farm in Keota, Iowa with estimated damages
19 approaching \$55,000. An article was posted on www.animalliberationfrontline.com
20 and reposted at www.directaction.info. During the November covert search of the Fit
21 in Oakland, Agents found a copy of the publication The Final Nail: Destroying the Fur
22 Industry. Within the publication are lists of fur farms in each state which include
23 names, addresses, telephone numbers, and other relevant information. Included in this
24 list was the "Don Conrad" farm information. This publication was later seized in the
25 December 2013 search along with a road map for the state of Iowa.

26 By September 6 and 7, 2013, Kissane and Buddenberg had returned to the Bay
27 Area and were logging into their known online accounts, making cash withdrawals,
28 and debit card purchases. This activity continued until September 14, 2013.

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2 **E. Third Road Trip**

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12 On September 25, 2013, approximately 1,000 mink were released from Rykola
Mink Farm in Ebensburg, Pennsylvania with damages estimated at approximately
\$32,000. A communiqué was posted on www.directaction.info claiming
responsibility for the release. The communiqué closes with the following: "Pelting
season is just weeks away. Look up The Final Nail and find a farm near you. Let the
final stages of Operation Bite Back commence." In the December 2013 search, FBI
Agents seized The Final Nail. Next to the typed name, address, and telephone number
for the Rykola Mink Farm is a handwritten notation in the form of two check marks
with a line through them. At the bottom of the same page, Kissane wrote the
following: "Dennis Watcher fox farm- 246 Municipal Rd. Ebensburg, PA 15931."

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20 On September 26, 2013, at approximately 10:20 a.m., Kissane and Buddenberg
had an encounter near Akron, Ohio with an Ohio State Highway Patrol trooper,
approximately 180 miles and a 1.5 hour drive west of Ebensburg, Pennsylvania. The
trooper was conducting a routine check of a rest stop and noticed Kissane's vehicle
parked with Kissane and Buddenberg apparently asleep in the car. When questioned,
Kissane said she did not know where they were coming from, and they had arrived at
the rest stop the previous night at approximately 7:00 p.m. Buddenberg gave a
different story regarding where they had been and where they were going.

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26 On October 5, 2013, approximately 2,000 mink were released from Bonlander
Farms in New Holstein, Wisconsin with damages estimated at approximately
\$141,000. A communiqué was posted on www.directaction.info claiming
responsibility for the release. In the December 2013 search, FBI Agents seized a road
map of Wisconsin and The Final Nail. Next to the typed name, address, and telephone
number for the Bonlander Mink Ranch in the publication is a handwritten notation
along with two check marks with a line through them.

1 In the early morning of October 7, 2013, approximately 440 mink were released
 2 from Myhre Mink Ranch in Grand Meadow, Minnesota with estimated damages of
 3 approximately \$50,000. A communiqué was posted on www.directaction.info
 4 claiming responsibility for the release. In the December 2013, search, as previously
 5 mentioned, FBI Agents seized a map of Wisconsin and The Final Nail. Next to the
 6 typed name, address, and telephone number for the Myhre Mink Ranch in the
 7 publication is a handwritten notation along with two check marks with a line through
 8 them. The distance from New Holstein, Wisconsin to Grand Meadow, Minnesota is
 9 approximately 278 miles and a 4.5 hour drive.

10 On October 11, 2013, the 2012 Honda Fit blew a tire. Kissane brought the
 11 vehicle into Discount Tire in Salt Lake City, Utah. Two tires were replaced at this
 12 time. Kissane made the \$145 purchase in cash and gave the alias “Ashley Kissane”
 13 with a false address and telephone number.

14 By October 14, 2014, Kissane and Buddenberg had returned to the Bay Area as
 15 evidenced by their logins to known accounts and local purchases. Their almost daily
 16 internet and bank activity resumed and then abruptly stopped on October 26.

17 F. **Fourth Road Trip**

18 On November 4, 2013, just after midnight, Kissane and Buddenberg were
 19 approached by an officer with the Wright County Sheriff in Iowa. The two were
 20 parked on the side of a gravel road, with the lights and car off. Upon questioning,
 21 Kissane informed the officer they left California four-to-five days prior to travel the
 22 country, as she had never been outside California. She indicated they spent the day
 23 prior in Des Moines, Iowa and were on their way to Minneapolis, Minnesota. The
 24 officer noted they were in a very rural area, approximately two-to-three miles from a
 25 large chicken and egg factory, and approximately 30 miles north of a mink farm in
 26 Jewel, Iowa. The officer escorted them back to the interstate. In the seized copy of
 27 The Final Nail, there were two mink farms in Jewell, Iowa that were marked. Next to
 28

1 the Erickson Mink Ranch is a handwritten notation in the form of two check marks.
2 Next to the Isebrands Fur Farm is a handwritten notation with one check mark.

3 On November 6, 2013, around noon, Minnesota State Police found Buddenberg
4 and Kissane sleeping in the vehicle at a rest stop in Austin, Minnesota. The trooper
5 found Kissane to be "purposefully evasive."

6 By November 17, 2013, Kissane and Buddenberg were both logging into
7 known accounts from the Bay area.

8 **G. Bay Area Vandalism**

9 Beginning in August of 2013, numerous animal enterprises in the Bay Area
10 were vandalized. On August 9, 2013, T&S Market (a wholesale poultry market),
11 Allied Pringle (a wholesale meat distributor), and Yung Kee (a restaurant) in Oakland,
12 California had their locks glued. Video surveillance from T&S Market showed two
13 individuals consistent with Kissane and Buddenberg gluing the locks. Video
14 surveillance also captured a car consistent with a Honda Fit passing in front of the
15 market less than three minutes before the vandals appeared from the same direction.
16 In a previous FBI case on Buddenberg, he was captured on surveillance video gluing
17 locks at T&S Market and Yung Kee, and was suspected of doing so at Allied Pringle
18 as well. Yung Kee and T&S Market are located approximately 200 feet apart.
19 Analysis of the data from the seized GPS device showed a similar pattern to those in
20 the San Diego vandalism in that two locations entered into the GPS were close to the
21 targeted location.

22 On August 10, 2013, BB Hawk, a retail fur store in San Francisco had etching
23 cream spread on its window. Yung Kee and Allied Pringle in Oakland had their locks
24 glued. Video surveillance from Yung Kee showed an individual looking like
25 Buddenberg gluing the locks.

26 On August 12, 2013, Marin Sun Farms, a wholesale meat distributor had its
27 locks glued and all tires on four delivery vans were slashed. Video surveillance from
28 the adjacent business revealed an individual who looked like Kissane slashing the

1 tires. Damages were in excess of approximately \$3,600. BB Hawk was visited a
 2 second night and had its window broken. Rockridge Market Hall in Oakland, which
 3 houses multiple food and beverage vendors, including Marin Sun Farms' retail
 4 butcher shop, had its locks glued and window etchant spread on its window. T&S
 5 Market in Oakland had its locks glued. Video surveillance from T&S Market showed
 6 an individual who looks like Kissane gluing the locks. Kissane appeared to be
 7 wearing the same outfit in the T&S video as in the Marin Sun Farms video from an
 8 hour and a half earlier.

9 On August 15, 2013, T&S Market in Oakland had its locks glued and windows
 10 broken with a hammer. Video surveillance from T&S Market showed two individuals
 11 looking like Kissane and Buddenberg gluing the locks and breaking the windows.
 12 Video surveillance also captured a vehicle consistent with a Honda Fit passing in front
 13 of the market approximately four minutes prior to the vandals appearing from the
 14 same direction.

15 **H. Financing Scheme and Base of Operations**

16 In the course of investigating Buddenberg and Kissane, agents explored how
 17 they were making money and financing their trips. They learned that Kissane and
 18 Buddenberg were unemployed throughout all of 2013. Evidence shows they financed
 19 their various road trips through selling thousands of dollars of items on eBay and
 20 Amazon.¹ The TomTom GPS device found in the Fit, a court-ordered surreptitious
 21 GPS tracking device installed at the time of the covert search of the Fit, handwritten
 22 lists, and physical surveillance indicate an interest in CVS, R.E.I., Michaels, and
 23 various pet stores, ostensibly to steal items that were later sold online through Kissane
 24 and Buddenberg's eBay and Amazon accounts. The evidence shows Kissane and
 25 Buddenberg financed their travel by this method, using the San Francisco Bay Area as
 26 their base of operations between trips. After their various road trips, Kissane and

27 ¹ Typically, they sold items that would be easy to steal and expensive to purchase. For
 28 example, they sold a great deal of Prilosec.

1 Buddenberg would return to the Bay Area, obtain large quantities of items they would
2 then list on eBay or Amazon.

3 FBI Agents conducted a controlled buy of some of the items sold on eBay by
4 Kissane, and large amounts of these same items were seized during the search of
5 Kissane's residence in December 2013. Both Kissane and Buddenberg abandoned
6 their accounts shortly after this interaction.

7 **I. Covert Vehicle Search– Oakland, CA – Mink Hair Found**

8 On November 20, 2013, at approximately 2:01 a.m., FBI Agents executed a
9 search warrant on Kissane's vehicle in Oakland and affixed a GPS vehicle tracker.

10 Agents photographed and left in place the following items of note:

- 11 1) Two one gallon jugs of muriatic acid;
12 2) The Blueprint, Fur Farm Intelligence Project: The Full Report;
13 3) Two bolt cutters;
14 4) Four wire cutters;
15 5) The Final Nail: Destroying the Fur Industry, Version 4 publication;
16 6) Rodney Coronado's book, Strong Hearts;
17 7) Hotels discount coupon books for multiple states; and
18 8) A book of maps of the United States

19 Agents seized the following items of note:

- 20 1) Two towels; and
21 2) Trace evidence removed from different parts of the vehicle using lint rollers.

22 The FBI laboratory analyzed the trace evidence on the lint rollers and the towels
23 and found mink hair.

24 **J. Residence and Vehicle Search – Escondido, CA**

25 On December 18, 2013, FBI Agents carried out an overt search warrant for
26 Kissane's vehicle and Kissane's residence in Escondido, California, where she was
27 temporarily residing after November 29, 2013.

28 Agents seized the following items:

1 1) Map of Idaho with different color Post-it markings on different
2 locations. Of note, there is a Post-it note next to Burley, Idaho.

3 2) Map of Washington with different color Post-it markings on different
4 locations.

5 3) Multiple maps including Washington, Utah, Oregon, Seattle/Tacoma,
6 North Dakota, South Dakota, Montana, Iowa, Michigan, Minnesota, Wisconsin,
7 Nebraska, and Wyoming.

8 4) Copy of The Final Nail with handwritten checkmarks and additional
9 notes written throughout the Fur Farm List.

10 5) AT&T go phone \$15 refill

11 6) Tracfone minutes (2 cards)

12 7) Four cellular telephones, two of which were in Kissane's Vehicle.²
13 Three of the cellular telephones had the batteries removed.

14 8) Handwritten lists of fur farms and other animal enterprises as well as
15 individuals associated with animal enterprises. The FBI Laboratory identified certain
16 lists as being written by Kissane and other that may have been written by Buddenberg.
17 Included on the lists written by Kissane were the following: two instances of the
18 Frazier Fur Farm, two instances of the Behling Fox Farm, the Moyle Mink Ranch, and
19 the Dennis Watcher Fox Farm in Ebensburg, Pennsylvania. Included on the lists that
20 may have been written by Buddenberg were two entries for Brian L. MacMillan and a
21 notation about muriatic acid. In addition, the following items of note were marked in
22 The Final Nail, but could not be attributed to Kissane or Buddenberg: George Rykola
23 (mink farm), Bonlander Mink Ranch, Myhre Mink Ranch, Erickson Mink Ranch, and
24 Isebrands Fur Farm.

25 9) Krazy and Super glue

26 10) Latex gloves

27 ² During a traffic stop one of their cross-country trips, Kissane told a trooper that she
28 did not have a cell phone.

1 11) Backpack containing the following items:

- 2 (a) Walkie talkie set with charging station
3 (b) Latex gloves
4 (c) Post-it notes
5 (d) Sharpie
6 (e) Hammer

7 12) Bag of disposable gloves

8 13) Bag of heat resistant gloves

9 14) Knife

10 15) Two headlamps

11 16) A GPS device

12 17) Numerous computers, flash drives and cameras. Kissane's laptop
13 and a USB drive were encrypted. The encryption software appears to have been
14 installed on the laptop August 5 or 6, 2013.

15 18) Trace evidence was removed from fourteen different parts of the vehicle
16 using lint rollers. FBI laboratory analysis revealed three tape lifts contained animal
17 hairs which are consistent with mink hair.

18 FBI Agents photographed and/or took note of the following:

19 1) Kissane's bedroom wall bore a framed picture of a mink release.

20 2) Kissane was wearing a sweatshirt at the time of the search depicting a
21 mink release.

22 **K. Operational Security Measures**

23 Both Kissane and Buddenberg ceased logging in to their PayPal, eBay,
24 Amazon, and Yahoo! accounts while they were believed to be outside of California.
25 These accounts were not accessed at all on any of the four road trips discussed above.
26 Upon returning to California, following road trips 2, 3 and 4, they logged into these
27 known accounts on a nearly daily basis, at times more than once a day. This is in

1 sharp contrast to their trips during which they went almost an entire month at one
2 point without logging into these accounts.

3 Financial data also confirms the same pattern. While in California, they both
4 used debit or credit card on a nearly daily basis. While outside the state, neither used
5 their debit or credit card a single time. Upon return to the Bay Area, both made
6 purchases with their cards. Additionally, during the approximate one-week time
7 period prior to taking a trip, the pair made large cash withdrawals, normally of the
8 maximum \$300 at a time. During the week prior to the first road trip, which lasted
9 about eight days, \$540 was withdrawn from their accounts, the lowest amount
10 withdrawn of the four trips. The highest amount withdrawn was \$1,020 before the
11 third road trip which lasted approximately 28 days. As with the lack of credit/debit
12 card activity, cash withdrawals ceased completely while the pair were outside
13 California.

14 The search warrant executed in December 2013 yielded multiple pieces of
15 paper in Kissane's handwriting containing riseup.net email addresses and a reference
16 to Tor. Tor is a program/method of anonymizing internet use. Riseup.net is an
17 anarchist-run email service which has pledged to resist any attempt by law
18 enforcement to disclose information about its subscribers. A pen register on Kissane's
19 email revealed multiple emails from "riseup.net" during the time period November 6,
20 2013 to January 5, 2014. On May 22, 2014, FBI Agents were advised by an employee
21 at the Hyatt House hotel in Emeryville, California that Buddenberg and Kissane had
22 made use of the computers in the hotel lobby. Specifically, he observed Buddenberg
23 logging into a hushmail account. Hushmail is a subscription-based e-mail service
24 offering "Secure e-mail with built-in encryption, no advertising, and unlimited e-mail
25 aliases." Agents were provided with a video from the lobby of the hotel confirming
26 this information and showing Kissane also logged into a hushmail account.

27 Kissane and Buddenberg did not use their known cellular telephones while
28 traveling outside the state of California with very few exceptions. Toll records for

1 their cellular numbers show periods, at times longer than a month, during which they
2 did not send texts, make, or receive telephone calls. This stands in stark contrast to
3 their usage while in California. During the December 2013 search of Kissane's home
4 and vehicle, four cellular telephones were seized from her bedroom and car, three of
5 which had the battery physically removed from the device.

6 **L. Mileage on the Fit**

7 The Government obtained a number of service records for the Fit, which show
8 that the car was driven an enormous number of miles that summer. An analysis of the
9 known mileage points for Kissane's Vehicle revealed the following:

10 Kissane's car was serviced on June 27, 2013, at Beaverton Honda in Beaverton,
11 Oregon, prior to her move back to Escondido, California. At the time the car was
12 serviced, the mileage was 14,854. Her car was serviced on August 2, 2013 at Poway
13 Honda in Poway, California at which time the mileage was 25,633. During this 36-
14 day period, the vehicle was driven 10,779 miles, an average of 300 miles a day.

15 Her car was serviced at Berkeley Honda in Berkeley, California, on September
16 7, 2013, at which time the mileage was 33,114. During this 37-day period the vehicle
17 was driven 7,481 miles, an average of 202 miles per day.

18 Her car was serviced at Berkeley Honda on October 15, 2013 at which time the
19 mileage was 45,073. During this 34 day period, the vehicle was driven 10,657 miles,
20 an average of 313 miles a day.

21 On December 18, 2013, Agents conducted an overt search of Kissane's car at
22 which time the mileage was 54,161. During this 68-day period, the vehicle was
23 driven 8,984 miles, an average of 132 miles a day.

24 On March 25, 2014, Kissane's car was serviced at Berkeley Honda at which
25 time her mileage was 60,093. During this 97-day period, the vehicle was driven 5,932
26 miles, an average of 61 miles a day. Physical surveillance, financial records, and
27 reports from UC Police and employees place Kissane and/or Buddenberg in
28

1 Escondido and Oakland, California for this entire time period with the exception of
 2 approximately two and a half weeks.

3 Kissane's car was serviced June 24, 2014, at Berkeley Honda at which time her
 4 mileage was 64,878.

5 **M. Literature Seized from Kissane's Residence**

6 On December 18, 2013, Agents executed a search at the Escondido home of
 7 Kissane's mother (where Kissane was living.) Agents also searched the Fit. Agents
 8 seized numerous publications and items from the animal rights and anarchist
 9 communities from Kissane's bedroom. Many of these publications offer instructions
 10 to individuals on how to obscure their online and telephone activities from law
 11 enforcement, as well as how to carry out an animal release or commit an act of
 12 vandalism against an animal enterprise.

13 **N. GPS**

14 During the December 18, 2013 execution of the search warrant on Kissane's
 15 vehicle, TomTom portable car navigation GPS was located in the glove box. FBI
 16 Agents conducted an extraction of the GPS data using Cellebrite technology at the
 17 Regional Computer Forensic Laboratory (RCFL). Three addresses in the GPS were
 18 considered residences by Kissane and/or Buddenberg; establishing not only the
 19 possession of the device, but current use by Kissane and Buddenberg.

20 The town of Malta, Idaho was the only location entered in the GPS outside of
 21 California, Washington, and Oregon. One of the handwritten notes seized in
 22 December referenced Smith Furs located in Malta, Idaho. The Final Nail seized in the
 23 December search had the following notation in Kissane's handwriting beneath the
 24 entry for Smith Furs: "expanding sheds." The owner of Smith Furs confirmed he had
 25 a project to expand the sheds stretching from the fall of 2012 to July of 2013.

26 **N. Relevant Graffiti**

27 Numerous businesses within the Bay Area had graffiti in their male or unisex
 28 restrooms in 2014 and 2015. Specifically, the URL www.directaction.info, the

1 website for Bite Back, was left at three locations of note: California College of the
 2 Arts (CCA), the Crossroads Dining Hall at the University of California at Berkeley,
 3 and Andronico's supermarket. Physical surveillance, witness testimony, and IP login
 4 information confirmed Kissane and Buddenberg were regular patrons at the
 5 Crossroads Dining Hall and CCA. Andronico's supermarket is located across the
 6 street from the Peets Coffee and Tea location where Kissane worked for a portion of
 7 2014. The loss prevention manager presented FBI Agents with a still photograph
 8 taken from surveillance video of the individual believed to be responsible for the
 9 repeat vandalism. The individual depicted in the photograph appears to be
 10 Buddenberg. Likewise, a chef at Crossroads Dining Hall was in the restroom and
 11 heard someone writing on the door to his stall. He exited the restroom and pursued
 12 the individual before confronting him outside the dining hall. During his pursuit of
 13 the vandal, he observed an item in his right hand that appeared to be a black marker.
 14 The chef positively identified the individual to campus police as Joseph Buddenberg.
 15 The BiteBack website is where all communiq  s for the direct actions identified
 16 above were either posted or reposted.

17 O. Communiqu   Analysis

18 Communiq  s were posted for all the direct actions listed above, with the
 19 exception of the vandalism of the two vehicles at the home of Larry Rose. There were
 20 numerous similarities in the communiq  s in the timing of their posting, sentence
 21 structure, and verbiage used. The communiqu   posted on Animal Liberation Frontline
 22 for the Myhre Mink Ranch mink release contained the following:

23 “*To the fur farmers of the world, we have nothing to say to you. We only offer*
 24 *this prayer: The rest is secrets. Silence now. If night has fallen, sleep well.*” This is
 25 taken directly from the lyrics of The Witch’s Heart, a song by the hardcore punk band
 26 Catharsis, who is related to an anarchist collective. The song states, in part:

27 “*To be free in death, if not in life, But the rest is secrets, silence now, If the*
 28 *night has fallen, sleep well.*”

Buddenberg's Facebook page lists Catharsis as music that he likes. This song was downloaded to Kissane's laptop on July 28, 2013

III.

PERTINENT LAW

A. Conspiracy to Violate the Animal Enterprise Terrorism Act

The elements of a violation of 18 U.S.C. § 43(a)(2)(C) (Conspiracy to Violate the Animal Enterprise Terrorism Act) are:

1. There was an agreement between at least two persons:
 - a. to travel in interstate or foreign commerce;
 - b. for the purpose of damaging or interfering with the operation of an animal enterprise;
 2. The defendant became a member of the conspiracy knowing of one of its objects and intending to help accomplish it; and
 3. The offense resulted in more than \$100,000 in damages (increases the statutory maximum to 10 years.)

Congress defined the term “animal enterprise” rather broadly. It includes any commercial or academic institution that “uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing....” As such, an animal enterprise would include fur farms, as well as retail furriers. It would also cover wholesale and retail meat/poultry suppliers. Additionally, the statute extends protection beyond the animal enterprise itself, to other property “connected” with the animal enterprise.

IV.

WITNESSES

The United States reserves the right to change the order of, substitute, or add or omit one or more witnesses. The United States will work with defense counsel and propose stipulations which may reduce the number of witnesses. At this early date, the United States may call the following witnesses during its case-in-chief:

1. Atkin, Cathy, Assistant Manager, C-A-L Ranch
2. Ashmore, Vincent, Tire Technician, America's Tire
3. Biebesheimer, Kyle, Special Agent, FBI San Francisco
4. Black, Taylor, Manager, Marin Sun Farms Butcher Shop
5. Bonlander, Gary, Owner, Bonlander Farm
6. Clark, Jacob, IT manager, Hyatt House hotel
7. Conrad, Donald, Owner, Conrad Fur Farm
8. Crabtree, Scott, Trooper, Minnesota State Patrol
9. Custodian of Records – 3M, ALPR witness
10. Custodian of Records – Amazon
11. Custodian of Records - Bank of America
12. Custodian of Records - eBay/Paypal
13. Custodian of Records - Federal Reserve
14. Custodian of Records – Google
15. Custodian of Records – Starbucks
16. Custodian of Records - United States Postal Service
17. Custodian of Records - Wells Fargo
18. Custodian of Records – Yahoo
19. Deming, Ron, employee, C-A-L Ranch
20. Dimick, Rory, service advisor, Berkeley Honda
21. Expert Witness (to be named later)
22. Evans, David, CEO, Marin Sun Farms
23. Frazier, Shelli, owner, Frazier Fur Farm
24. Frazier, Antoine, FBI Lab
25. Frye, Deborah, Special Agent, FBI San Francisco
26. Gowan, Rene, Property Manager at The 212 Lofts (bldg adjacent to Ribnick Fur & Leather)
27. Graf, Janet, owner, Furs By Graf

1 29 Graf, Kimberley, former owner, Furs By Graf
2 30 Graf, Ludi, Prev. former owner Furs By Graf
3 31 Heimans, Steven, owner, Allied Pringle Food Sales
4 32 Hobbs, Irene, owner, 3218 Kenora Dr
5 33 Huedepohl, Barry, Deputy Sheriff, Wright County Sheriff's Office
6 34 Kasprak, Michael, Trooper, Illinois State Police Department
7 35 Kruse, Mark, engineer, Vigilant Solutions, ALPR Long Beach, CA
8 36 Lahey, Bruce, Owner, 69 Converse St (bldg adjacent to Marin Sun
9 Farms)
10 37 Lin, Benjamin, owner, BB Hawk
11 38 Lopez, Jose, front desk host, Hyatt House hotel
12 39 Lowry, Jared, Officer, Elko Police Department
13 40 MacMillan, Brian, Vice President, North American Fur Auction
14 41 McClelland, Cameron, Service Coordinator, America's Tire
15 42 Mengar, Michael, President, North American Fur Auction
16 43 Menolascino, Justin, Special Agent, FBI San Diego
17 44 Merian, Lauren, Staff Operations Specialist, FBI San Francisco
18 45 Moyle, Cindy, Owner, Moyle Mink Farm
19 46 Myhre, Einar, Owner, Myhre Mink Ranch
20 47 Nissen, Brian, manager, C-A-L Ranch
21 48 Ng, Robert, owner, T&S Market,
22 49 Patterson, Robert, Supervisor, Public Safety Department, California
23 College of the Arts
24 50 Pedokus, Jamie, Investigative Operations, Analyst, FBI San Diego
25 51 Persinger, Michael "Sean", manager, America's Tire
26 52 Peterson, Mark, assistant manager, Discount Tire
27 53 Ribnick, Bill, Owner, Ribnick Fur & Leather
28 54 Ribnick, Justin, Owner, Ribnick Fur & Leather

55 Rickenbach, Michael, FBI Lab
56 Rose, Larry, Chief of Police, Darby, Montana
57 Rykola, George, Owner, Rykola Mink Farm,
58 Soh, Wai Khen, student, California College of the Arts
59 Soh, Wai Ming, student, California College of the Arts
60 Stockton, Dale, ALPR expert witness Carlsbad, CA
61 Swindel, Daniel, User Support Specialist, California College of the Arts
62 Thomas, Curtis, FBI Lab
63 Trotter, Douglas, Trooper, Ohio State Highway Patrol
64 Tyson, Carter, service manager, Berkeley Honda
65 Unser, Glennis, former Carlsbad PD officer
66 Walker, Jessica, FBI Lab
67 Waters, Glesty, service advisor, Beaverton Honda
68 Weller, Erin, Intelligence Analyst, FBI
69 Weathers, Matthew, service advisor, Berkeley Honda
70 Wright, Cyrus, employee, C-A-L Ranch
71 Wong, Kwon, employee, Yung Kee Restaurant

V.

An exhibit list will be provided a week before trial

VI

VOIR DIRE

The United States requests an opportunity to conduct voir dire. The United States further requests that the following voir dire questions be addressed to the jury panel in addition to the Court's standard jury questions:

1. The Court will instruct you about the law. Will you follow the law as given by the Court and disregard any idea or notion you have about what the law is or should be?

1 2. The Government will be calling witnesses employed by the United States
2 Government and various state governments. Does anyone have family members or
3 close friends who work, or have worked for the Federal Government? Would that
4 prevent you from being fair and impartial? What about working for the state of
5 Nevada? Wisconsin? Idaho? Minnesota? Illinois? Iowa? Pennsylvania? Ohio? Utah?
6 Colorado? Does anyone have any negative views of those who are employed by the
7 federal government or any of the states named that would prevent you from being fair
8 and impartial?

9 3. Has anyone had an unpleasant or negative experience with any law
10 enforcement personnel? Would that cause you to be biased against law enforcement?

11 4. Has anyone here ever been a member of an organization that promotes
12 animal rights or environmental rights? Has anyone here ever been a member or
13 donated money to People for the Ethical Treatment of Animals or any similar
14 organization? Is anyone here familiar with the Earth Liberation Front or the Animal
15 Liberation Front?

16 5. The Defendant in this case is charged with a crime that involves releasing
17 animals that are being bred for their fur? Does anyone here own a fur coat? Does
18 anyone here have strong feelings either for or in opposition to the fur industry?

19 6. Has anyone had any training in the law? If so, please explain.

20 7. Will you be able to put aside any feeling of sympathy or pity, if any, for
21 the defendants when deciding the facts of this case?

22 8. Does everybody understand that a defendant is entitled to a fair trial?
23 Does everybody understand that the United States is also entitled to a fair trial?

24 9. Does anybody have any firmly held moral or religious beliefs or
25 reservations that might prevent him/her from standing in judgment of another person?

26 10. Regardless of any position you may have on the proper role of
27 government, if you become a juror in this federal trial, will you be able to follow the
28 federal law of the United States as it presently stands and as the judge instructs you?

12. The law requires the government to prove its case against the Defendant beyond a reasonable doubt. If you are selected, would you want the United States to prove its case by a higher standard of proof, e.g. beyond any possible doubt?

13. Is anyone here involved in criminal defense work, or have any friends or family members who are involved in criminal defense work?

14. Is anyone here involved in law enforcement or have any friends or family members who are involved in law enforcement?

VII.

JURY INSTRUCTIONS

The United States anticipates that its proposed instructions will be taken from the Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit (2010). Jury instructions will be submitted separately.

DATED: 1/19/2016

Respectfully Submitted,
LAURA E. DUFFY
United States Attorney

/s/ Michael F. Kaplan
MICHAEL F. KAPLAN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

V.

JOSEPH BRIEN BUDDENBERG (1),
NICOLE JUSANITA KISSANE (2),
Defendant

) Case No. 15CR1928-LAB

CERTIFICATE OF SERVICE

JOSEPH BRIEN BUDDENBERG (1),
NICOLE JUSANITA KISSANE (2),
Defendant

IT IS HEREBY CERTIFIED THAT:

I, Michael F. Kaplan, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of United States Preliminary Trial Memorandum on the parties listed on ECF by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct

Executed on January 19, 2016

s/Michael F. Kaplan
MICHAEL F. KAPLAN